

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION**

MICHAEL JOHNSON,)
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Plaintiff,))
)
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v.) No. 4:05CV2138 HEA
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JANSSEN PHARMACEUTICA, L.P.,) (Including All Consolidated Cases)
et al.,)
)
)
Defendants.)

MEMORANDUM AND ORDER

On April 27, 2006 and May 8, 2006, Chief Judge Jackson entered Orders for the Court consolidating with this case and several others for the purpose of consideration of the pending Motions to Remand which had been filed. The cases were inadvertently consolidated into Lead Case Number 4:05CV1914, *B. v. Jansen Pharmaceutica, L.P., et al.* This case, however, was remanded on March 3, 2006. For the purposes of clarity and docket control, the following cases are therefore consolidated into this matter solely for the purpose of consideration of the pending Motions to Remand:

Journey v. Janssen, et al.4:05CV1924 ERW

Agarwal v. Janssen, et al.4:05CV1935 JCH

Alford v. Janssen, et al., 4:05CV2026 CDP

Prince v. Janssen, et al., 4:05CV2086 CDP

Cain v. Janssen, et al., 4:05CV2120 JCH

Howard v. Janssen, et al., 4:05CV2122 CDP

Hunter v. Janssen, et al., 4:05CV2123 JCH

West v. Janssen, et al., 4:05CV2124 CDP

Starkey v. Janssen, et al., 4:05CV2141 CDP

Hanks v. Janssen, et al., 4:05CV2144 JCH

Martin v. Janssen, et al., 4:05CV2150 DJS

Sage v. Janssen, et al., 4:05CV2152 HEA

Smith v. Janssen, et al., 4:05CV2153 CEJ

Saunders v. Janssen, et al., 4:05CV2154 SNL

Deruyter v. Janssen, et al., 4:05CV2155 CAS

Harrington v. Janssen, et al., 4:05CV2158 ERW

Hurst v. Janssen, et al., 4:05CV2181 CEJ

Lehar v. Janssen, et al., 4:05CV2182 JCH

C.M. v. Janssen, et al., 4:05CV2183 CAS

Robinson v. Janssen, et al., 4:05CV2199 JCH

Treibер v. Janssen, et al., 4:05CV2292 CEJ

Johnson v. Janssen, et al., 4:06CV204 CDP

Delvalle v. Janssen, et al., 4:06CV205 SNL

McClane v. Janssen, et al., 4:06CV236 DDN

Stover v. Janssen, et al., 4:06CV238 DDN

S.M. v. Janssen, et al., 4:06CV260 CDP

Alberty v. Janssen, et al., 4:06CV415 CDP

Williams v. Janssen, et al., 4:06CV416 TCM

Jones v. Janssen, et al., 4:06CV418 TCM

The matter is now before the Court for consideration of same.

These cases, all involve the prescription drug, Risperdal. In its Memorandum and Order dated March 3, 2006, in K.B. v. Janssen, et al., Case Number 4:05CV1914HEA, the Court considered the same allegations contained in these consolidated cases that were contained in those cases against resident physician defendants regarding prescribing Risperdal *vis a vis* fraudulent joinder. The Court concluded, based on the Eighth Circuit standard for determining fraudulent joinder, that plaintiffs has sufficiently stated a cause of action against the resident physicians such that the Court did not have diversity jurisdiction. See K.B. v. Janssen, et al., Case Number 05CV1914HEA, Order dated March 3, 2006.

The same analysis applies to these cases as well. The defendant physicians in these cases are alleged to have owed plaintiffs a duty to exercise that degree of skill and proficiency which is commonly experienced by the ordinary, skillful, careful and prudent physician engaged in the practice of medicine. Plaintiffs have plead that the defendant physicians failed to properly diagnose, treat and/or evaluate complaints and symptoms following plaintiffs' ingestion of Risperdal. Based on these allegations, it cannot be said that there is no reasonable basis in fact or law supporting the claim stated against the defendant physicians. Furthermore, because there exists a plausible claim against the resident physicians, the Court cannot conclude that plaintiffs have no real intention of prosecuting the negligence action against them. Therefore, plaintiffs' motions to remand will be granted in those cases in which the resident doctors have been served.

It appears that plaintiffs in Cause Numbers 4:06CV204 CDP, 4:06CV415 CDP and 4:06cv418 TCM have failed to effectuate service on the resident physicians within the prescribed time period. Plaintiffs' motions to remand in these cases will be denied without prejudice, and plaintiffs are granted 14 days from the date of this order to show cause why the Motions to Dismiss these defendants for failure to serve should not be granted. Failure to show cause will result in dismissal of the resident defendants without prejudice..

Accordingly,

IT IS HEREBY ORDERED that plaintiffs' Motions to Remand, are granted in this case and in the following cases:

Journey v. Janssen, et al. 4:05CV1924 ERW

Agarwal v. Janssen, et al. 4:05CV1935 JCH

Alford v. Janssen, et al., 4:05CV2026 CDP

Prince v. Janssen, et al., 4:05CV2086 CDP

Cain v. Janssen, et al., 4:05CV2120 JCH

Howard v. Janssen, et al., 4:05CV2122 CDP

Hunter v. Janssen, et al., 4:05CV2123 JCH

West v. Janssen, et al., 4:05CV2124 CDP

Starkey v. Janssen, et al., 4:05CV2141 CDP

Hanks v. Janssen, et al., 4:05CV2144 JCH

Martin v. Janssen, et al., 4:05CV2150 DJS

Sage v. Janssen, et al., 4:05CV2152 HEA

Smith v. Janssen, et al., 4:05CV2153 CEJ

Saunders v. Janssen, et al., 4:05CV2154 SNL

Deruyter v. Janssen, et al., 4:05CV2155 CAS

Harrington v. Janssen, et al., 4:05CV2158 ERW

Hurst v. Janssen, et al., 4:05CV2181 CEJ

Lehar v. Janssen, et al., 4:05CV2182 JCH

C.M. v. Janssen, et al., 4:05CV2183 CAS

Robinson v. Janssen, et al., 4:05CV2199 JCH

Treiber v. Janssen, et al., 4:05CV2292 CEJ

Delvalle v. Janssen, et al., 4:06CV205 SNL

McClane v. Janssen, et al., 4:06CV236 DDN

Stover v. Janssen, et al., 4:06CV238 DDN

S.M. v. Janssen, et al., 4:06CV260 CDP

Williams v. Janssen, et al., 4:06CV416 TCM

IT IS FURTHER ORDERED that these cases are remanded to the Circuit Court for the City of St. Louis.

IT IS FURTHER ORDERED that the motions to remand are denied, without prejudice in the following cases:

Johnson v. Janssen, et al., 4:06CV204 CDP

Alberty v. Janssen, et al., 4:06CV415 CDP

Jones v. Janssen, et al., 4:06CV418 TCM

IT IS FURTHER ORDERED that plaintiffs are given 14 days from the date of this order to show cause why the resident defendants in Cause Numbers

4:06CV204 CDP, 4:06CV415 CDP and 4:06CV418 TCM should not be dismissed,
without prejudice for failure to effectuate service.

IT IS FURTHER ORDERED that the Clerk of the Court shall docket this
Order in all cases reference herein.

Dated this 25th day of August, 2006.



HENRY EDWARD AUTREY
UNITED STATES DISTRICT JUDGE